

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeenn G. Kelly.

Delmarva Power & Light Company

Docket No. ER04-509-000

ORDER CANCELLING RATE SCHEDULES, FINDING THE UNEXECUTED
INTERCONNECTION AGREEMENTS SUBMITTAL DEFICIENT AND DIRECTING
THE FILING OF ADDITIONAL INFORMATION

(Issued March 25, 2004)

1. Delmarva Power & Light Company (Delmarva) made a filing under Section 205 of the Federal Power Act on January 30, 2004, to cancel rate schedules for certain customers and to obtain authorization for unexecuted Interconnection Agreements with some of these same customers. The Commission accepts cancellation of the rate schedules, finds the filing of the proposed Interconnection Agreements to be deficient, and directs the filing of additional information. This order benefits customers because it ensures that proposed jurisdictional services are necessary and adequately supported.

Description of Filing

2. First, Delmarva proposes to terminate eight rate schedules¹ effective December 31, 2003. These rate schedules are for the Delaware Municipal Electric Corporation (DEMEC) and seven cities and towns: the City of Seaford, Delaware, the City of Milford, Delaware, the City of Newark, Delaware, the City of New Castle, Delaware, the Town of Middletown, Delaware, the Town of Clayton, Delaware, and the Town of Smyrna, Delaware (collectively, the Municipalities). Delmarva states these rate schedules expired by their own terms on December 31, 2003, and that the Municipalities now obtain their power supply from a wholesale third party power supplier, DEMEC, that is recognized as their load serving entity by the PJM Interconnection, LLC (PJM), and which purchases from PJM all transmission and related services required for the delivery of its power supply to the Municipalities.

¹ See the Appendix for a listing of the rate schedules that Delmarva proposes to terminate.

3. Second, Delmarva is submitting seven unexecuted Interconnection Agreements, one for each municipality. Delmarva believes the Municipalities must obtain interconnection service from Delmarva to remain interconnected to the PJM-operated transmission system and that Delmarva must have authority from the Commission to provide this interconnection service.

4. Delmarva asserts the proposed unexecuted Interconnection Agreements provide for obligations such as remaining electrically interconnected at specified points of interconnection; coordination of planning and operation over the interconnection facilities; and action in accordance with the PJM Operating Agreement, the PJM Tariff, and the PJM Reliability Assurance Agreement. The proposed unexecuted Interconnection Agreements also permit Delmarva to collect deficiency charges for reactive power and 110 percent of any charges that PJM may impose on Delmarva when a Municipality fails to obtain services or otherwise meet its obligations under the proposed Interconnection Agreement with Delmarva. Delmarva requests an effective date of January 1, 2004, for the proposed Interconnection Agreements.

Notice of Filing

5. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 6,962 (February 12, 2004), with comments, protests, and motions to intervene due on or before February 20, 2004.

6. DEMEC filed a motion to intervene, protest, and motion to reject the Interconnection Agreements on behalf of itself and its members. DEMEC is a joint action agency formed under Delaware law. Its members are the Delaware Cities and Towns of Newark, New Castle, Seaford, Milford, Lewes, Smyrna, Clayton, Middletown, and Dover, Delaware. Seven of these member Municipalities (all but Lewes and Dover) purchase their wholesale requirements from DEMEC which purchases some of its wholesale supply and generates some. DEMEC states that it is the network service customer of PJM for transmission of the Municipalities' power supply to their load and is an active member of PJM.

7. Pursuant to Rule 214 of the Commission's Rules and Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

8. DEMEC does not dispute the notices of cancellation of the rate schedules. However, DEMEC does oppose the unexecuted Interconnection Agreements and asks the Commission to reject them. DEMEC asserts there is no authority that requires the Municipalities to enter into these agreements. It further asserts PJM provides all of the Municipalities' transmission service, including interconnection, and Delmarva does not provide any transmission or interconnection service to the Municipalities. DEMEC states

that the PJM Open Access Transmission Tariff (OATT) only requires generation customers to have interconnection agreements, not distribution companies; that adequate and reliable service is already addressed by the PJM Network Integration Transmission Service Agreement (NITSA) and the PJM Operating Agreement (OA)² to which DEMEC is a party; and that many of the provisions in the proposed unexecuted Interconnection Agreements duplicate provisions in the NITSA or OA. Last, DEMEC asserts that Delmarva's proposed collection of charges retroactively to January 1, 2004, violates the filed rate doctrine.

9. On March 8, 2004, Delmarva filed an Answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Delmarva's Answer because it has provided information that will assist us in our decision-making process.

Discussion

Contentions of the Parties

10. Delmarva maintains that the instant unexecuted Interconnection Agreements are necessary for the Municipalities to obtain service using Delmarva's transmission facilities. Delmarva argues that under the expired rate schedules, it provided a bundled service which consisted of power supply, transmission, and interconnection services. Now that those rate schedules have expired by their own terms and the Municipalities have obtained power supply and transmission service through other suppliers, Delmarva believes that the instant Interconnection Agreements are necessary for the Municipalities to obtain electric service.

11. Delmarva points to a similar Interconnection Agreement between Delmarva and the City of Lewes, Delaware, which has been accepted by the Commission, as support for its position that an Interconnection Agreement is necessary between the Municipalities and Delmarva.³ Delmarva further offers that Old Dominion Electric Cooperative and the

² For PJM network customers serving load in the PJM Control Area, the PJM OA serves as the Network Operating Agreement. Attachment G, Original Sheet No. 297, PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1.

³ Delmarva Power & Light Company, Docket Nos. ER04-188-000 and ER04-188-001, (filed November 12, 2003, modified December 22, 2003, accepted February 17, 2004).

Town of Berlin, Maryland, have entered into similar Interconnection Agreements with Delmarva.⁴

12. Delmarva, citing Tennessee Power Company, 90 FERC ¶ 61,238 (2000), further argues that the Commission has previously recognized that interconnection service and delivery service are separate elements of transmission service.

13. Delmarva states that it engaged in extensive negotiations with DEMEC, who was acting on behalf of the Municipalities, concerning the terms and conditions of the instant Interconnection Agreements. Delmarva states that it filed the unexecuted Interconnection Agreements in order to obtain authority required to provide the interconnection service necessary for the Municipalities to remain connected to the PJM-operated transmission system and that it is Delmarva's understanding that the Municipalities have refused to execute the Interconnection Agreements because of a dispute with Delmarva involving an issue that is not within the Commission's jurisdiction.

14. DEMEC filed a protest to the instant Interconnection Agreements on behalf of itself and its members. DEMEC does not dispute or protest the notices of cancellation. DEMEC does believe that the instant Interconnection Agreements are unnecessary and unauthorized, and that Delmarva has misrepresented its relationship with the seven Municipalities, and the history of these draft agreements.

15. DEMEC asserts that the subject municipal systems are currently transmission customers of PJM (through DEMEC) and are located in the PJM Delmarva zone. DEMEC states that it repeatedly objected to the whole idea of an interconnection agreement as unnecessary and unauthorized, but that in an effort to be good neighbors, and in light of the different relationship that the seven municipals would have with Delmarva starting on January 1, 2004, DEMEC and its members sought to revise another contract between Delmarva and the municipals that is non-jurisdictional to the Commission, and agreed to negotiate voluntarily an interconnection agreement that could be workable for Delmarva and the Municipalities only if the other agreement could be successfully developed. DEMEC states that negotiations broke down prior to the end of 2003.

⁴ "Interconnection Agreement Between Delmarva Power & Light Company and Old Dominion Electric Cooperative," accepted for filing by unpublished letter order issued January 7, 2000 in Docket No. ER00-705-000; "Interconnection Agreement Between Delmarva Power & Light Company and the Town of Berlin, Maryland," accepted for filing by unpublished letter order issued April 27, 2001 in Docket No. ER01-1640-000.

16. DEMEC argues that there is no transmission or interconnection service being provided by Delmarva to the Municipalities because Delmarva is no longer a transmission service provider, having relinquished operation of its entire system to PJM in 1997. DEMEC notes that the Commission has held that:

Interconnection is an element of transmission service and is already required to be provided under our pro forma tariff. This is true whether the interconnection request is tendered concurrently with the request for transmission service or in advance of a request for specific transmission service.⁵

17. DEMEC then argues that if interconnection is an element of transmission service, and is provided under the pro forma tariff, then it is already being provided by PJM pursuant to the PJM OATT, and thus the filing of these draft unexecuted Interconnection Agreements is based on no statutory, regulatory or case law authority. Also, because Delmarva seeks to charge rates for service that Delmarva cannot and does not provide under any tariff filed with the Commission, the instant Interconnection Agreements are completely unauthorized. DEMEC and its members request that the proposed Interconnection Agreements be rejected by this Commission, with prejudice against any attempted refiling by Delmarva.

18. DEMEC notes that many of the provisions contained in the instant Interconnection Agreements are already covered by the NITSA or OA. DEMEC argues that the PJM OATT does not require a transmission customer to deal separately with the transmission owner, and that the instant Interconnection Agreements are in conflict with existing agreements, tariffs, and Commission-approved requirements.

19. Delmarva's Answer asserts that DEMEC is the network transmission customer of PJM, that it is DEMEC's members that own and operate the electric facilities that are physically connected to the Delmarva system, that DEMEC has no operational control nor financial responsibility for those facilities, and, because none of the DEMEC members are signatories to the PJM NITSA and are thus not taking transmission service from PJM, the DEMEC members are not bound by the terms of the NITSA.

Analysis

20. We will grant Delmarva's request for waiver of notice requirements and we will accept the notices of cancellation. However, we find that Delmarva has failed to demonstrate the necessity of the instant unexecuted Interconnection Agreements.

⁵ Tennessee Power Company, 90 FERC ¶ 61,238 at p. 61,761 (2000).

Delmarva's filing is, therefore, deficient and cannot be accepted at this time. We will, therefore, require the filing of additional information as discussed below.

21. Our establishment of independent system operators (ISO's) and regional transmission organizations (RTOs) was intended to facilitate the development of competitive electric markets, and increase the efficiency of the electric transmission systems. One of the ways ISOs and RTOs help accomplish these goals is by minimizing the number of entities with which a customer must contract and negotiate to secure transmission service. As much as is practicable, ISOs and RTOs provide "one-stop shopping" for transmission service customers.

22. Under the PJM OATT, a request for network integration transmission service requires that the transmission customer, here, DEMEC, provide PJM, the transmission provider, with delivery point information, among other things. PJM is then responsible for coordinating with the transmission owner, and the transmission customer, if necessary. The PJM OATT does not provide that an agreement is necessary between the customer and the transmission owner. The PJM tariff provides, instead, that the network customer is responsible for maintaining and operating the facilities on its side of each delivery point or interconnection.⁶ Similarly in Occidental Power Services, Inc. v. PJM Interconnection, L.L.C.(OPSI),⁷ the Commission determined that a network customer of PJM is subject to the requirements of the wholesale provisions of the PJM tariff, including those under which it is responsible for PJM receiving information pertaining to hourly information for the next day's forecast and it schedules deliveries of power at its bus. In addition, the interconnection of the systems of the load, that is, the Municipalities, to the PJM-operated system is included in the network integration transmission service for which DEMEC has subscribed.⁸

23. The unexecuted Integration Agreements that Delmarva has filed, are not, in fact, interconnection agreements like those that the Commission has required. The Commission has required that generators have interconnection agreements, not electrical

⁶ Section 29.4, Original Sheet No. 84, PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1.

⁷ 103 FERC ¶ 61,285 P 20, 24, 25, 28, order on reh'g, 104 FERC ¶ 61,289 P 15 and 16 (2003).

⁸ Tennessee Power Company, 90 FERC ¶ 61,238 at p. 61,761 (2000).

systems that serve load.⁹ The unexecuted documents Delmarva has submitted appear to be more akin to operating agreements than interconnection agreements.

24. Notwithstanding that other municipalities may have voluntarily entered into so-called Interconnection Agreements with Delmarva, a PJM transmission customer is under no apparent obligation to enter into such an agreement. A PJM transmission customer may secure transmission service by making application to PJM using the procedures provided in the PJM OATT. PJM is responsible for the operation of the transmission system and any compensation due Delmarva as a result of transmission service that uses Delmarva facilities will be paid to Delmarva by PJM as provided by the PJM OATT and OA. Contrary to Delmarva's assertions, the network transmission service that DEMEC receives under its network service agreement with PJM includes delivery to the facilities of the Municipalities.

25. Delmarva's filing states that the proposed Interconnection Agreements are necessary for the seven Municipalities to secure transmission service. However, DEMEC states that, through DEMEC, the seven municipal systems are currently transmission customers of PJM. In its Answer, Delmarva asserts that the seven Municipalities are not signatories to the PJM NITSA, are not taking transmission service from PJM and are not bound by the terms of the PJM NITSA. Delmarva's allegations are not supported by the record in this proceeding and we are unable to make a finding on the necessity or the reasonableness of the proposed Interconnection Agreements. Therefore, the Commission will direct Delmarva, DEMEC and PJM to file the information specified below to assist us in making the necessary determinations in this proceeding.

26. Delmarva is directed to file an explanation of why the requirements of the PJM OATT are not sufficient for the Municipalities to obtain network transmission service considering that DEMEC is the Network Transmission customer and is responsible for meeting the requirements of the OATT.

27. DEMEC is directed to file an explanation of how DEMEC will be able to carry out all the PJM Tariff requirements for a network transmission customer. DEMEC is further directed to describe, and file executed copies of, any agreements that would bind DEMEC's members to performing according to the terms of the NITSA that DEMEC executed with PJM. DEMEC is also directed to file a description of, and explanation

⁹ Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003); Order No. 2003-A, Order on Rehearing, 106 FERC ¶ 61,220 (2004).

regarding, any specific provisions of Delmarva's proposed Interconnection Agreements that it finds objectionable.

28. PJM is directed to file an explanation of whether there is anything in the PJM OATT, OA, or any other PJM requirement that makes Delmarva's proposed Interconnection Agreements necessary. PJM is also directed to explain whether it made a determination that DEMEC was able to fully satisfy all of PJM's requirements for a network transmission customer. PJM is further directed to explain whether DEMEC should be treated differently from the network customer in OPSI, and if so, why. Finally, PJM is directed to describe whether agreements such as those proposed by Delmarva are common on PJM's system, and explain the circumstances under which parties have entered into such agreements.

The Commission orders:

(A) We grant Delmarva's request for waiver of our notice requirements and accept Delmarva's proposed Notice of Cancellation tariff sheets listed in the Appendix to become effective December 31, 2003.

(B) Delmarva, DEMEC and PJM must file the information specified in the body of this order within 30 days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

APPENDIX

Tariff Sheets Filed January 30, 2004 to be effective December 31, 2003:

First Revised Sheet No. 1, First Revised Rate Schedule FERC No. 99
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 103
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 104
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 105
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 109
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 111
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 112
First Revised Sheet No. 1, Second Revised Rate Schedule FERC No. 113